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No. _____

IN THE

Supreme Court of the United States

October Term, 1983

STANLEY YALKOWSKY,

Plaintiff-Appellant,

—against—

J. HENRY NEALE, JR., JOHN H. BARRY, RICHARD L. GERLOFF, FRANK M. HEADLEY, JR., PAUL W. KNAPLUND, JULES BACKMAN, JACKSON B. BROWNING, RAYMOND J. CANTWELL, DOROTHY V. GRIFFIN, JOHN W. JOHNSON, JR., IRVING J. KERN, GEORGE C. LAWRENCE, BETTY MENKE, S. J. SCHULMAN, ALFRED P. SLANER, THOMAS KAVANAUGH, LORRAINE T. CELIO, SCARSDALE NATIONAL BANK & TRUST COMPANY, HON. WILLIAM A. WALSH, JR., JONATHAN FRIEDMAN, AMERICO NAPOLITANO and DEANNE NAPOLITANO, BENJAMIN SHEDLER and ALLEN WEISS,

Defendants-Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STANLEY YALKOWSKY, ESQ.
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Questions Presented

1. Whether the appellant was denied due process, counsel and a forum to be heard by Judge Griesa's unwarranted usurpation of a matter pending before another judge, and his dismissal of such matter without notice or opportunity to be heard granted to the appellant.

1(a). Whether Judge Griesa abused discretion and violated the plaintiff's constitutional safeguards provided by the Fourteenth Amendment, when with notice that plaintiff was seeking his disqualification he did have a matter before another justice of the federal court transferred to him, without notice to the plaintiff, and did dismiss this matter, and in so doing did prevent plaintiff from seeking Judge Griesa's disqualification under 28 U.S.C., 144.

1(b). Whether Judge Griesa improperly utilized Rule 15 of the Local Federal Procedures in assuming jurisdiction over a matter properly before another federal judge, and having such matter transferred to him without basis.

1(c). Whether the appellant was denied due process in being denied a hearing to disqualify Judge Griesa.

2. Whether Judge Griesa exceeded his jurisdiction and deprived the appellant of due process by providing counsel, in that Judge Griesa raised immunity and other legal defense in behalf of the respondents --

(a) in granting Judge William Walsh immunity without permitting Judge William Walsh to make his own free choice; and in denying disputation of Judge Walsh's entitlement to immunity;

(b) in disenabling Scarsdale National Bank and Trust Company from its right to waive jurisdiction as a defense.

3. Whether the District Court and the Court of Appeals for the Second Circuit decided federal questions of substance not in accord with applicable decisions, and in direct contradiction to correct holding.

3(a). Whether the plaintiff's complaint did present cognizable causes of action, and it was an abuse of discretion by Judge Griesa to dismiss the plaintiff's complaint.

3(b). Whether the plaintiff's claims were cognizable claims, properly pleaded in the federal court.

3(c). Whether Judge Griesa used incompetent reasoning as a basis for dismissal of the plaintiff's complaint.

4. Whether the appellant's constitutional protections under 42 U.S.C., 1983 of the Civil Rights Act guaranteeing appellant protection from the taking of personal property under color of law by private parties acting with state officials deprived the appellant of a substantial civil right.

4(a). Whether Judge Griesa misunderstood our constitutional protections and guarantees and incorrectly ruled that private parties cannot be sued under 42 U.S.C., § 1983, thereby denying the appellant his civil right.

4(b). Whether Judge Griesa misunderstood the constitutional protections to property guaranteed by 42 U.S.C., § 1983 when he incorrectly ruled that the plaintiff stated no valid claim under federal law.

5. Whether Judge Van Graafieland of the United States Court of Appeals did deny plaintiff-appellant due process and counsel.

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Parties to the Proceeding

The caption contains the names of all parties proceeding before the Court of Appeals and the District Court.

Opinion Below

The order and opinion of the United States Court of Appeals for the Second Circuit appears in the Appendix intra at 1A.

The order and opinion of the Southern District of New York appears in the Appendix intra at 4A.

Jurisdiction

The order or judgment of the Court of Appeals for the Second Circuit was entered on June 17, 1983. The petition for certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C., § 1254(a).

Constitutional Provision and Statutes Involved

Fourteenth Amendment:

". . . No state shall make or endorse any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of Facts

The plaintiff filed a complaint in the United States District Court for the Southern District of New York, dated December 30, 1982, and the complaint was served upon the defendants by the United States Marshall on January 3, 1983. The complaint consisted of the following allegations (Exhibit A, pages 42-82 of plaintiff's brief and appendix to the Court of Appeals):

a) Conspiracy to defraud the plaintiff by the defendants, including a national bank;

b) violation of the plaintiff's constitutional rights under 42 U.S.C., § 1983 in denying the plaintiff due process;

c) violation by directors of the Scarsdale National Bank of the Banking Act, Title 12 U.S.C. § 93, and common law tort by the directors

d) negligence;

e) intentional infliction of mental distress.

Jurisdiction was based on the Banking Act of the United States; Title 12 U.S.C., § 93; 28 U.S.C., § 1331; Title 12 U.S.C., § 94 and 42 U.S.C.A., § 1983.

The matter was originally assigned to Justice Charles E. Stewart, Jr., but on or about January 18, 1983 the matter was usurped by Judge Griesa, who misused Rule 15 of the F.R.A.P. and on February 2, 1983 dismissed the complaint.

Earlier, and on January 3, 1983, the plaintiff wrote to Judge Thomas Griesa to inform Judge Griesa of this new complaint, and to clarify to Judge Griesa that this "new complaint" was not the same complaint in an amended form of that complaint which had been previously filed with Judge Griesa,

which had as its main cause of action the interference and withholding of family members from filial relationship with each other by third parties acting in concert with state officials under color of law, and in violation of the plaintiff's civil rights under 42 U.S.C. Sec. 1983. That complaint also sought the certification of a class action, and also sought removal of certain matters in the state court to the federal court because of inherent bias and the unpopular nature of the plaintiff's complaint, which did charge numerous judges of the state courts with misconduct.

The new complaint was an entirely different complaint; the plaintiffs were different, the defendants different, the causes of action totally different.

Judge Griesa had already dismissed the prior complaint on October 4, 1982

without reading the complaint (intra 20A), and under circumstances that resulted in charges brought to the Judicial Council concerning Judge Griesa's conduct, which included ex parte and extra-judicial contact with defendants and attorneys, as well as a designed effort to defeat and suppress the plaintiff's claims by having his clerk call the plaintiff to coax the plaintiff to not make any default motion regarding the late responses of the defendants until the holding of a conference, and that there would be no dismissals. There was no conference and the plaintiff's complaint was dismissed by Judge Griesa, who confessed to his non-reading of the plaintiff's complaint, only reluctantly granting the plaintiff his right to present an amended complaint only if such complaint was presented to Judge Griesa first. (See

intra 47A, plaintiff's charges of Judge Griesa's misconduct to the Judicial Council.)

The plaintiff determined to appeal Judge Griesa's ruling, and at the same time determined to present a new complaint, which was entirely separate and distinct from the prior complaint, but since it was necessary to correct a typographical defect in his pleading which failed to name one of the defendants, the plaintiff was advised by the clerk that in order to add that party, who happened to be Benjamin Shedler, one of the defendants, it would be necessary to characterize this complaint as 'amended'. As a result, the plaintiff on January 3, 1983 (intra 24A wrote to Judge Griesa and did inform Judge Griesa that this new complaint which was characterized as 'amended' had nothing to do whatsoever with the

older complaint dismissed by Judge Griesa. And in this same letter the plaintiff asked that Judge Griesa disqualify himself from any further litigation involving the plaintiff and the named defendants (intra 25A.) Judge Griesa never responded to this letter in any fashion.

It must be further added that the transcript of the proceedings of October 4, 1982 leading to Judge Griesa's dismissal of the plaintiff's complaint also displayed extreme bias, in that the judge stated that he did not believe that the plaintiff could present a proper complaint, and saw as a burden and hardship the necessity for banks and judges to respond to the plaintiff (intra 21A).

Additionally, the judge's actions indicated extra-judicial contact. The response the plaintiff received from Judge Griesa came by way of a letter

from J. Henry Neale, Jr., one of the defendants himself, and representing the defendant Scarsdale National Bank et al. This letter of J. Henry Neale, Jr., dated February 3, 1983 (intra 26A) was received the day before Judge Thomas Griesa entered his opinion dated February 2, 1983, and revealed the dismissal of the plaintiff's complaint, a complaint that was never responded to by J. Henry Neale, Jr., nor the other bank defendants, although their time to answer had now expired. The dismissal was final and without leave to amend, and it was the first notification to the plaintiff that Judge Griesa had the matter, (intra 28A).

The plaintiff was never advised by either Judge Stewart or any of the defendants that Judge Griesa had usurped this matter, thereby preventing the plaintiff from making formal notice for

his disqualification.

Judge Griesa in his opinion concluded (intra 6A):

> ". . . I directed that the amended complaint be submitted to me for review . . ."

leading to Judge Griesa's conclusion that the plaintiff's appeal of his decision and his presentation of a new matter ". . . sought to evade these directions." On the one hand Judge Griesa considered the second complaint a new complaint, but then on the other hand his opinion stated: (intra 14A).

> "The dismissal of these actions is final. There will be no leave to file any further amended complaint."

If we try to decipher the intention of Judge Griesa by his statements, the only realistic conclusion is that the judge was arbitrarily despotic in concluding that the plaintiff's utilization of his legal remedies of

appeal to be an evasion of his directions. This is if we believe that Judge Griesa considered the plaintiff's second complaint an amendment of the first complaint dismissed by Judge Griesa. Any fair reading of the two complaints will show that it will be impossible to consider the second complaint an amendment of the first complaint.

What is revealed by these maneuvers is a judge stealthily usurping pleadings from a fellow judge, dismissing them without notice, utilizing court rules improperly, abusing legal process, denying the plaintiff his legal remedies, and indeed denying the plaintiff the courts, in a disgraceful display of unethical conduct.

Which leads us to Judge Van Graafieland and the conduct he portrayed, which was merely a continuation of that

of Judge Griesa, and indeed a continuation of the conduct that plaintiff described of Milton Mollen and Irving Selkin of the Appellate Division, New York State Court, Second Department, who in defense of themselves had undertaken the most illegal and unethical postures in order to prevent their exposure. (It should be noted that the plaintiff's claims in no wise and in no manner strike at the vast majority of judges seated in our courts, but unfortunately the corruption and dishonor of our courts do involve a small but very influential and powerful segment of our judiciary which must be opened to view.)

Judge Van Graafieland and the
Court of Appeals, Second Circuit

The Court of Appeals decision in Yalkowsky v. Neale, et al. confirmed that on October 4, 1982 Judge Griesa dismissed the plaintiff's complaint 82-C5665 with leave to amend. (Yalkowsky et al. v. Shedler, et al.) Judge Van Graafieland continued (intra 2A):

> "Instead of filing an amended complaint the appellant brought the above-captioned action bearing Southern District Docket No. 82 C 8748 (Yalkowsky v. Neale) with the new number of 83-7131,"

with Judge Van Graafieland adding:

> "We affirm substantially for the reasons set forth by the district court in its several orders."

Judge Van Graafieland in effect adopted the absolutely inconsistent and empty decision of Judge Griesa. Judge Van Graafieland further concluded:

> "The contention that Judge Griesa should have recused himself is completely without merit,"

a conclusion reached by Judge Van Graafieland not capable of being reached, considering the allegations and Van Graafieland's denial of due process and legal disputation.

Returning to Judge Van Graafieland's decision, we also note that in Yalkowsky v. Shedler, et al. Judge Van Graafieland concluded, "The order was not final and therefore not appealable." (intra 31A) However, in Yalkowsky v. Neale, et al Judge Griesa concluded that the orders were final (intra 14A), resulting in totally inconsistent orders without sense or reason, as the Court of Appeals seemingly considered the two complaints one and the same.

Footnote: The Court of Appeals, Second Circuit decision is often referred to herein as Van Graafieland's decision.

The Complaints

In fact, the complaints were distinct. The first complaint consisted of -

(i) interference with a family, involving human constitutional rights;

(2) a class action against the district attorney;

(3) and an application to change venue -

a great distance from the instant action involving -

(i) fraud and deceit, involving monies of the plaintiff only and not his children;

(ii) constitutional deprivation of personal property; and

(iii) negligence.

There were different plaintiffs and different defendants, and the relief sought of such nature that they had to

be pleaded separately. Moreover, the plaintiff carefully presented, by letter to Judge Griesa, the differing quality of the actions and the meaning of "amended complaint," since Judge Griesa had demonstrated a previous propensity to not read the plaintiff's complaint. But it was to no avail.

Summary

The Court of Appeals merely affirmed the lower court's decision without addressing any of the issues presented by the plaintiff. A new complaint, without semblance to the prior complaint, was treated as an "amendment" or not an "amendment" with willy-nilly abandonment by the lower court and the Court of Appeals, as every effort was made to prevent disputation, or indeed exposure of fraud in the courts, the unfortunate, main undercurrent of the plaintiff's

cause of action. The plaintiff's arguments, although correct on every point, were arbitrarily ignored. In essence, all questions presented to the lower courts are now presented to the United States Supreme Court for the first time.

Footnote:

Only very recently, in fact on August 25, 1983 Judge Wilfred Feinberg had FBI agents come to my home, claiming that one of my petitions contained a threat to him. My letter, which was a letter requesting review by the Judicial Council of the conduct of Justice Van Graafieland and Justice Griesa, which had been endorsed by Judge Feinberg is included (intra 32A). My response to Judge Feinberg's insisting that FBI agents come to my home is also included to explain how the Chief Justice of the Court of Appeals, Second Circuit, has misutilized another branch of government to suppress the exposure of corruption in the state and federal courts (intra 37A).

Point I(A)

If a judge knows or has reason to believe that his disqualification is sought, would it be an improper contravention of 28 U.S.C, 144 for such judge to have another matter before another judge transferred to him, and without notice to the plaintiff, to dismiss such matter and thereby deny the plaintiff his right to seek the judge's disqualification?

Section 28 U.S.C., 144 does provide for a mechanism permitting a plaintiff with cause to disqualify a judge from ruling on matters before such judge, if it can be shown that such judge was biased and has acted with misconduct; or for other reasons provided by such Section 28 U.S.C., 144.

Judge Griesa was on notice, pursuant to a letter of January 3, 1983 of the plaintiff's intention to have him disqualified (intra 24A). It should also be noted that the plaintiff did appeal

from Judge Griesa's decision to the Court of Appeals, and did in this appeal seek Judge Griesa's disqualification.

The plaintiff submits that when Judge Griesa received the letter of the plaintiff seeking and notifying his Honor of the plaintiff's position regarding Judge Griesa's disqualification, at the very least Judge Griesa should have responded to the plaintiff so as to permit the plaintiff to make motion pursuant to 28 U.S.C., 144 or 28 U.S., 455; and that Judge Griesa, by stealthily and without notice to the plaintiff, usurping this matter in the manner he did, and dismissing this action in the manner he did, did in fact act with malice, if not misconduct, by such dishonorable and injudicious actions of a federal court judge.

It would appear that the judge's activity in this matter was more in the nature of an unethical lawyer acting at his worst, since Judge Griesa's sua sponte decision was so incompetent and his citing of cases so poor, that strong insidious inferences present themselves regarding Judge Griesa's conduct with this case and with the defendants, as will be described herein.

It has been determined in 28 U.S.C. 144 that questions of the bias of a judge should prevent him from acting on a matter until that question is resolved, once it has been raised by the plaintiff by affidavit. If the plaintiff's appeal were to be considered affidavit sufficient of the plaintiff's intentions and his notification to Judge Griesa of his desire to have Judge Griesa disqualified; or if the plaintiff's letter of January 3, 1983 (intra 15A) were to be

considered sufficient, in what light can we view a judge who, when presented with so much information of a plaintiff's intention to disqualify him, acted stealthily and deviously in usurping and dismissing a matter in the vindictive manner as did Judge Griesa? Would it not be reasonable for the plaintiff to expect a response from Judge Griesa after the plaintiff had written to the judge? How can one view a judge who usurps a matter unbeknownst to the plaintiff, and without notice to the plaintiff of his having such case, dismisses the case, preventing the plaintiff from utilizing his right to move to disqualify the judge, and particularly when this maneuver is done by a federal judge with every indication of extra-judicial and ex-parte activity?

Point I(B)

Did Judge Griesa properly utilize Rule 15 of the Local Federal Procedure Rules in assuming jurisdiction of a matter before another justice?

The purpose of Rule 15 is to aid justices who are familiar with matters that have been before them to have related matters transferred to them that are before other justices, because of their connection with the case, and does serve a judicially economic purpose in enabling judges who are familiar with matters to utilize this familiarization without duplication of such effort by other justices.

In the instant matter Judge Griesa had no familiarity with the plaintiff's matter before him since he admittedly did not read the plaintiff's original complaint (intra 19A), and expressed his intention, which he so stated, that he will not read the plaintiff's complaint

(intra 20A) and so as a matter of fact and law, had no familiarity with the plaintiff's matter; and did have Judge charles Stewart transfer the new matter, while it was before Judge Stewart, misusing the intent of Rule 15 for a purpose other than that for which it was intended; and did, on or about January 18, 1983, stealthily and surreptitiously usurp and dismiss this matter, and deny the plaintiff his equal protection under the law, and in so doing oppress the plaintiff.

Point I(C)

Whether Judge Griesa should have been required to respond or hold hearing as to appellant's charges of his ex-parte communications with defendants and their counsel

Firstly, "It is well established that ex-parte communications are presumably improper (Glynn v. Donnelly, 485 F.2d 692 [1st Cir. 1973])." However, the plaintiff does not dispute that mere ex-parte conversation between judges and lawyers, while they should be discouraged, can often be harmless. But since these communications are presumably improper, their harmless quality must be shown. And every case cited required a showing or at least a denial or explanation by the charged judge.

In Parr v. Flushing Savings Bank, (U.S.C.A., Eastern District of N.Y. 1981) the bank sought the judge's disqualification under Section 455(a). The

judge denied the motion, explaining the harmless quality of his ex-parte communications.

In Ronwin v. State Bar of Arizona, 663 F. 2d 914 U.S.C.A. (9th Dist. 1981) it was held:

> ". . . Given Judge Real's emphatic denial of Ronwin's allegations, and Ronwin's failure to show such communications . . . Judge Real did not abuse his discretion by denying Ronwin's motion on this ground."

Judge Griesa never denied nor explained his ex-parte or extra-judicial role; nor did he permit opportunity for the plaintiff to make an application for his disqualification. These factors coupled with those already described in Points I(A) and I(B) herein, present a judge who reached a new level in denying due process.

Summary of Point

Judge Griesa should have been disqualified for his bias in favor of the defendants and disfavor to the plaintiff

For the reasons already stated herein in this brief, and in the interest of protecting the constitutional guarantees of litigants in our federal courts, and based on the facts presented of the conduct of Judge Griesa, it would be most appropriate that Judge Griesa be disqualified from this matter.

A claim of bias in this matter cannot be evaluated as loosely labelled by the plaintiff. The judge's comments were confirmatory.

1) Judge Griesa's unsolicited, self-conjured statement of having no confidence in the plaintiff's ability to present a complaint or an amended complaint;

2) Judge Griesa's self-confessed statement of having not read the original complaint, and his expressed unwillingness to read such complaint;

3) Judge Griesa's bias in favor of the high standing and eminent positions of the defendants, and his stated desire to not inconvenience them.

4) Judge Griesa's insistence that an amended complaint be submitted to him first before submission to the defendants.

Additionally, and in support of the plaintiff's contention that Judge Griesa be disqualified, is the presence of an appearance of impropriety, which unfortunately exists in this matter. (See accompanying petitions to United States Supreme Court, Yalkowsky et al v. Shedler et al and Yalkowsky v. Mollen, et al.)

While the following cases cited herein show the necessity to promptly bring a motion to disqualify a judge for bias, Judge Griesa completely disenfranchized the plaintiff from that remedy. In Gibson Discount Co. Inc., et al. v. Federal Corporation, 682 Fed. 2d 554 (5th Cir. 1982), it was reasoned:

> "The Commission, in denying the Gibson motion for reconsideration indicated that disqualification claims must be raised as soon as practicable . . ."

A motion to disqualify a judge should be brought as promptly as possible. This reasoning was further justified in Delesdernier v. Porterie, 666 Fed. 2d 116 (5th Cir. 1982), which cited the relevant statute.

> "28 U.S.C., Section 455
>
> Justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings. . ."

It is submitted that Judge Griesa has violated the provisions of 28 U.S.C., Section 455. The plaintiff had no opportunity or notice to enable him to utilize 28 U.S.C., Section 455.

For the reasons already stated in this brief, and for the additional facts as stated in the preceding points in this instant appeal, Judge Griesa should have been disqualified, in that his behavior was totally inappropriate; his interference with litigation of another justice of this Federal Court; his ex-parte relationship with J. Henry Neale, Jr.; his searching out a complaint and dismissing it, stealthily and without notice to the plaintiff; his

openly-admitted statements of bias, considering the defendants "burdened", the plaintiff's complaint "abuse"; his inept legal reasoning and his overall actions as a judge who displayed a vindictiveness and vengeance unseemly to a justice of the federal courts.

Point II(A)

Did Judge Griesa exceed his authority in granting immunity to Judge William Walsh when Judge Walsh did not have the opportunity to freely choose whether he wishes to avail himself of such immunity? (a) Was it in Judge Griesa's discretion to act as defense counsel for Judge William Walsh and raise defense for Judge Walsh? (b) Did Judge Griesa overreach in presenting a defense that Judge Walsh may not have wished to utilize? (c) Can the plaintiff raise objection to the granting of Judge William Walsh's immunity? (d) Did Judge Griesa deny the appellant his right to produce evidence disentitling Judge Walsh to judicial immunity?

(A). Judge Griesa was not retained by Judge William Walsh. The mere fact that a defense is available need not infer that it be automatically interposed.

(b). The defense of immunity is not a badge of courage nor an emblem of honor Judge Walsh certainly had the alternative

right of waiving immunity of declaring himself immune. Judge Walsh may have disdained to raise immunity as a defense. He may have chosen to meet the plaintiff's charges head on if he believed they were false, especially in a Section 1983 matter (see Gomez v. Toledo, 446 U.S. 635 100 S.Ct. 1920(1980).

(C) Plaintiff contends that he can object, especially when the plaintiff is the only party who could object, since Judge Walsh could not even, if he chose to, as he had not been given the opportunity to answer the plaintiff's pleadings. This was a defective decision by Judge Griesa, in that Judge Griesa interposed legal defenses in a manner that Judge Walsh may have determined not best suited to himself, and in so doing did create issues of potential appeal for Judge William Walsh; and at

the same timedid deprive the plaintiff of jurisdiction had Judge Walsh decided to waive immunity. Furthermore,

(D). The courts have held that immunity of judges is dependent on whether the challenged conduct is considered an official judicial act. (Stump v. Sparkman, 435 U.S. 349). In Harper v. Merckle, 638 F. 2d 848 (1981) it was held:

> ". . . Under the unusual and rare facts of this case . . . leads us to conclude that Judge Merckle cannot assert absolute judicial immunity. . ."

The Court also noted in Merckle, supra:

> "From the earliest days of our republic to the present only on five occasions has the Supreme Court addressed squarely the issue of judicial immunity."

And further noted:

> "What is or is not a "judicial act" is not wholly free from doubt."

Judges have been held liable. In Holton v. Bowman, 493 F. 2d 1176

(1974 2d Cir.), it was held:

> ". . . This Circuit has held a judge liable for damages when he acted outside the scope of his duties. (Skyers v. Butterhoff, 317 F. 273 (cir. 1973])."

The plaintiff presented facts which were not controverted by the defense, which established that Judge Walsh had conducted himself in a manner inconsistent with his gift of judicial immunity. To grant judicial immunity to a judge who had conducted himself as Judge Walsh did would be permitting a judge to utilize immunity as a tool to aid in the conduction of criminal acts rather than for its reasonable and just use as a protection for justices from unwarranted litigation brought on by discontented petitioners.

Judge Griesa in his decision denied the disputation of Judge Walsh's extra-judicial conduct, which would have made him ineligible to obtain judicial immunity

Point II(B)

Did Judge Griesa in ruling that Scarsdale National Bank may not be sued in the federal court usurp and prevent Scarsdale National Bank from its right to waive such jurisdiction by his interference and interposition in this matter?

(a) Jurisdiction may exist in the federal court.

(b) Even if Scarsdale National Bank had the right to object to jurisdiction it may not have chosen to

In Buffum v. Chase Manhattan Bank of New York, (C.A Ill. 1951) 192 Fed. 2d 58, it was held that the right of a national bank to be sued in the federal court may be waived or lost by failure to assert it. This right of waiver or loss never arose as Judge Griesa, by his interference before such decision could be made or asserted by Scarsdale National Bank, dismissed the complaint and asserted such right on behalf of

Scarsdale National Bank. In fact, we do not know whether Scarsdale National Bank chose to be sued in the federal court rather than in the State Supreme Court; and in fact, based on prior pleadings of Scarsdale National Bank, there is reason to believe that Scarsdale National Bank had no objection to being served and sued in the federal court.

Point III(A)

The plaintiff's complaint did present cognizable causes of action and it was abuse of discretion of Judge Griesa to dismiss the plaintiff's complaint

The facts as described by the plaintiffs in this matter show overwhelming support of the validity of the causes of action presented, and have provided far in excess of the standards of O'Brien v. Paddock, 246 Fed. Supp. 809 (D.C.N.Y. 1965), which held that a complaint is not subject to dismissal unless the plaintiff cannot prevail under any state of fact which might be proven in support thereof. The courts have taken a most lenient position regarding the upholding of complaints and have entertained motions to dismiss complaints on its face only where a plaintiff could not possibly prevail under any state of facts which could be proven.

Negoya Inc. v. Esquire Inc., 191 Fed. Supp. 379 (D.C.N.Y. 1965); K. S. Corp. v. Chemstrand, 198 Fed. Supp. 310 (D.C.N.Y. 1961); Egelston v. State University College at Genesco, 515 Fed. 2d 752 (1976).

> "Affording the complaints the favorable conspectus to which they are entitled, our review persuades us that the District Court acted prematurely in dismissing these actions and thus denying both plaintiffs the opportunity to establish their claims under the Civil Rights Act. . ." Weiss v. Lelandais, et al., 532 F. 2d 358 (2d Cir. 1976)

> "Chief Justice Burger wrote in Scheuer v. Rhodes (416 U.S. 232, 236 [1974]): "When a Federal Court reviews the sufficiency of a complaint before the reception of any evidence either by affidavit or by admissions, its task is necessarily a limited one. The issue is not whether the claimant is entitled to offer evidence to support the claims . . . Moreover, it is well established that in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter,

> or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader." Weissman v. Lelandias, et al,(supra)

Furthermore, pleadings should not be dismissed if by any construction it states claim by which relief can be granted. Blazon Inc. v. Delock Grain Corp. 268 Fed. Supp. 416 (D.C.N.Y. 1965). The plaintiff submits that his causes of action were legally sufficient, notwithstanding the liberal construction afforded to plaintiffs to enable the finding of causes of action. The plaintiff's causes of action are meritorious without the benefit of favor.

Furthermore, even if we were to rely on the cases cited by Judge Griesa in his 'opinion' of February 2, 1983, we find every indication that the plaintiff's complaint should not have been dismissed.

> "Where a litigant raises claims under the Civil Rights statutes, even though a complaint appears to be insubstantial, the more judicious approach is to assume jurisdiction and then decide whether the pleading states a claim for relief. (See U.S. v Guest, 383 U.S. 745, 756, 86 S.Ct. 1170, 16 L.Ed. 2d 239 (1966); Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946); Rhodes v. Meyer 334 F. 2d 709 (8th Cir. 1964), cert. denied, 379 U.S. 915, 85 S.Ct. 263, 13 L.Ed. 2d 186 (1964); Jemazura v. Belden, 281 F. Supp. 200 (N.D.N.Y. 1968); Joe Louis Milk Co. v. Hershey, 243 F. Supp. 351 (N.D. Ill. 1965); Olson v. Board of Ed., 250 F. Supp. 1000, (E.D.N.Y. 1966); Campbell v. Glenwood Hills Hospital Inc., 224 F. Supp. 27 (D. Minn 1963) Stambler, et al., v. John J. Dillon et al., 302 F. Supp. 1250).

Additionally, the courts have "repeatedly stated that a District Court should not dismiss a Section 1983 damage claim on grounds of qualified immunity unless the defense has been asserted by the defendant." (Gomez v. Toledo, 446 U.S. 635, 100 S.Ct. 1920 (1980). The court in Gomez v. Toledo, supra, was loathe to dismiss a Section 1983 claim

unless the state official utilized immunity as a defense. (The analogy is not far removed in this matter when Judge William Walsh did not assert his immunity as discussed in Point III(A) intra.)

Summarizing, we find a cognizable action stated with every reason for its maintenance and non-dismissal, in that -

1) it is the better judicial approach (Stambler, supra);

2) a Section 1983 case should not be dismissed unless immunity is asserted as a defense (Gomez v. Toledo, supra)

Point III(B)

The plaintiff's claims were cognizable claims, properly pleaded in the federal court

There were several theories supporting the plaintiff's claim in the federal court, any one of which should suffice.

1) Property rights are protected by the fourteenth Amendment and violation thereof can be redressed by suit under 42 U.S.C., 1983 (Hofferber v. The First National Bank of Guymon, Oklahoma, 437 F. Supp. 788 (Western Dist. Okla 1977) (Point IV(B) intra).

2) A national bank may be sued in the federal court (See Buffum v. Chase Manhattan Bank of New York, supra). (Point II(B) intra). Additionally, in Tafco v. National Bank of Commerce of Dallas, Texas, 490 F. Supp. 132 (U.S.D.C. for Western Dist. Pennsylvania 1980) it was held:

> "A national bank may waive the privilege in one of three ways: by express declaration, by failure to assert the privilege, or by actions which are inconsistent with the assertion of the privilege. . ."

3) Private parties may be sued under federal law when there is concert of action under color of law with state officials. (See Arment v. Commonwealth National Bank, 505 Fed. Supp. 911 (1981) (Point IV(A) intra). Yet none of the legal principles presented were responded to, and the plaintiff-appellant's actions arbitrarily dismissed.

> The plaintiff's claims were cognizable under (1) 12 U.S.C. § 93, (2) 12 C.F.R. 7.5225, and (3) 42 U.S.C., § 1983

> (1) "Private cases permitted under Section 93 have involved breaches of specific duties under the Bank Act. For example, the filing of false quarterly reports with the Comptroller of the Currency in violation of 12 U.S.C. Sec. 161." (Golar v. Daniels, 553 F. Supp. 101)

In fact, under Section 93 there have been any number of actions sustained in the courts that were not brought by banks or shareholders, and were brought by individuals in their own right. "Any other party who might have a legitimate interest" may sue (Jackson v. First National Bank of Valdosta, 349 F. 2d 71 (1965). See also Georgia Association of Independent Insurance Agents, et al. v. Saxon, 260 F. Supp. 802 (U.S.D.C. Ga. 1966).

Furthermore, the most recent decision of Harmsen v. Armholdt Smith, U.S.D.C. (Cal. 1982) 693 F. 2d 932, in referring to its prior holding, stated:

> "The Harmsen court relied on a much earlier statement by the Supreme Court in Chesbrough v. Woodworth, 244 U.S. 72 78, 37 S.Ct. 579, 582 (1917), that Section 93 "is exclusive and precludes a common-law liability for fraud and deceit." This conclusion in Chesbrough in turn, was based on the court's earlier

opinion in Yates v. Jones National Bank, 206 U.S. 158, 27 S.Ct. 638 (1907). The Yates court concluded that the Bank Act cause of action must be exclusive as against pendent state claims in order to shield bank directors from standards of liability that varied from state to state.

We thus follow our earlier conclusion in Harmsen I that, for purposes of uniformity, state law causes of action are not allowable if the allegedly wrongful conduct comes within the scope of the National Bank Act. Liability against C. Arnholt under the pendent claims cannot be supported to the extent that the Section 93 cause of action was based on the same conduct. If, on the other hand, the pendent claims against C. Arnholt were based on conduct outside the reach of the Bank Act, considerations of uniformity would not apply, and Section 93 would not bar such claims.

The provisions of the Bank Act proscribe specific conduct and are limited in coverage. See e.g., 12 U.S.C., Sec. 82, 84. See Harmsen I, 542 F. 2d at 501 (Section 93 relief limited to actions proscribed within Chapter 2 of Bank Act).

The complaint alleges, and the record clearly shows, that C. Arnholt was engaged in fraudulent activity that went far beyond the

> narrow range of conduct prohibited by the Act. The District Court judge specifically so held in his denial of defendants' motion for judgment n.o.v., and we agree. We thus conclude that the District Court acted properly in considering the pendent claims against C. Arnholt."

In essence, Chapter 2 was interpreted to include the claims of the plaintiffs. In fact, the language was so strong as to require a fraud and deceit action to be brought in the federal court, as held in Chesbrough (supra). See also Thompson v. Kerr, 555 F. Supp. 1090 (1982), which summarized and noted "the trend of case law interpreting private actions under the Act."

Judge Griesa's opinion (intra 11A) completely disregard all legal principles as he concluded that directors cannot be held liable, when it was held:

> "A director may be held liable if he deliberately refrains from investigating that which it is his duty to investigate." Corsicana National Bank v. Johnson,

And action may be brought against a director for violation of common law duties. Payne v. Ostrus, (1931 C.A.S. Iowa) 50 Fed. 2d 1039.

(2) The plaintiff has a cognizable claim under 12 C.F.R. 7.5225

Judge Griesa's interpretation that the gravamen of the plaintiff-appellant's claims consisted of the conspiratorial theft of Three Thousand Dollars ($3,000) and the bank's failure to respond to subpoena (intra 10A) when these were the least serious of the plaintiff's allegations, created serious doubts as to Judge Griesa's legal competency in addition to the other questions raised concerning Judge Griesa's bias and integrity.

The plaintiff charged the defendants at Scarsdale National Bank with -

1) knowingly permitting customers to forge signatures;

2) knowingly disobeying court orders;

3) knowingly aiding in the alteration of checks;

4) knowingly permitting a check to be endorsed without the signature of Stanley Yalkowsky, a necessary endorsee;

5) knowingly submitting misleading signature cards to hide from exposure the proprietorship of certain individuals;

6) knowingly hiding and claiming loss of numerous accounts, documents and relationships by certain parties with the Scarsdale National Bank;

7) aiding a customer in the conversion of monies;

8) knowingly permitting customers who have forged checks and documents to continue banking at the same branches of Scarsdale National Bank to this present day;

9) failing to report these defalcations to the Comptroller of the Currency and other authorities, as provided by the United States Banking Act and other agency requirements;

10) using counsel, in particular J. Henry Neale, Jr., with full knowledge that J. Henry Neale, Jr. has actually participated in the submission of false and misleading documents, and has aided in the suppression of legal exploration by urging and counseling employees to not respond to subpoenas, and other actions.

Judge Griesa simply ignored the plaintiff's allegations.

Judge Griesa had other arguments as well. He determined that the plaintiff in alleging that the bank had committed defalcations in not filling out certain reports was not a claim supporting a cause of action (intra 12A). The defalcations as alleged certainly supported the causes of action claimed, and at the very least, established negligence, a cause of action in and of itself, in that if such defalcations were reported, the damages sustained by the plaintiff could have been prevented. Notwithstanding whether the defalcations were reported or not, their nature was patently culpable conduct.

In fact, Judge Griesa miscomprehended that the plaintiff was alleging claims under 12 U.S.C., 7.5225, when this was not so. In fact, a reading

of the plaintiff's first page of his complaint under jurisdiction reveals four statutes, none of which is 12 U.S.C. 7.5225 (Exhibit A).

Point IV(A)

Judge Griesa misunderstood the constitutional protections and guarantees and incorrectly ruled that private parties cannot be sued under 42 U.S.C., 1983

Judge Griesa stated in his decision:

> "The other defendants are private parties who cannot be sued under Section 1983."

Judge Griesa relied on the case of Russell v. The Town of Mamaroneck, 440 F. Supp. 607 (S.D.N.Y. 1977). Russell (supra) is not the law of the land. Judge Griesa in his haste to harm quoted law that a layman would not quote. Judge Griesa incompetently stated that a judge's immunity extends to private parties acting with him, an outrageous and incompetent ruling by a justice of the federal court (especially in light of the constitutional deprivations of a family of numerous members, in a most

barbaric fashion). (intra 13A).

Judge Griesa also quoted Stambler, et al. v. John J. Dillon et al., (supra). This case again recited the same principles as recited in the case of Russell v. The Town of Mamaroneck, supra, and was defective in other manners as well, such as, there was no allegation in Stambler (supra) that Judge Dillon was part of any conspiracy. Certainly, Judge Griesa was not maintaining that the appellant herein did not allege that Judge William Walsh was part of a conspiracy.

Judge Griesa made massive error in his decision claiming that private parties may not be liable under 42 U.S.C. Section 1983. Arment v. Commonwealth National Bank, supra, held:

> "Concert of action between a private person and one acting under color of law exposes a private person to liability under Civil Rights Act of 1971,

> even if the state official presents a valid defense or enjoys complete immunity. (42 U.S.C.A., Section 1983)"

This holding was completely contrary to Judge Griesa's interpretation of the meaning of Section 1983. Arment (supra) further held:

> ". . . Where it is alleged that the attorney "joined" or "co-orporated with," or "conspired with" state officers, who acted under color of state law, state action will exist (42 U.S.C.A., Section 1983)."

See also Pugliano v. Staziak, 231 Fed. Supp. 347 (3rd Cir. 1965), and Hamilton v. Jamieson, 355 Fed. Supp. 219 (Ed. 1973); Dennis v. Sparks, 449 U.S. 24 (1980).

> "Assuming for present purposes the truth of plaintiff's allegation that defendant acted in tandem with the district judge and policemen to deprive the plaintiff of his liberty (Walt v. Seldin, 432 U.S.C., 4910, 95 S.Ct. 97; Cowper Process Equipment Inc. v. Food Machinery and Chemical Corporation, 372 U.S. 172, 97 S.Ct. 347. . .[1975]."

> ". . . defendants cannot claim immunity from a 1983 action." (Arment, supra).

Dennis v. Sparks (supra) held that ". . . conspiracy with the judge is not subject to dismissal," and therefore private parties are liable.

Point IV(B)

Judge Griesa misunderstood the constitutional protection and guarantees of 42 U.S.C., 1983 when he incorrectly ruled that the plaintiff stated no valid claim under federal law

Judge Griesa stated in his decision:

"It is evident upon analysis that the complaint fails to state any valid claim cognizable in a federal court."

and,

"With regard to the possible state law claims, there is no diversity of citizenship; therefore there is no jurisdiction over the state law claims."

While Judge Griesa cited no cases to uphold his rulings, the plaintiff cites the proper law, which holds exactly to the contrary of Judge Griesa's decisions, as reported in Hofferber v. The First National Bank of Guymon, Oklahoma, 437 F. Supp. 788 (Western Dist. Okla. 1977), such case having held that property rights are protected by the

Fourteenth Amendment, and violation thereof can be redressed by suit under 42 U.S.C., 1983; and which also held:

> ". . . that plaintiff had asserted a substantial federal question, namely, defendant's alleged intentional violation of plaintiff's constitutionally protected property rights by alleged conspiracy with a state official . . ."

Hofferber (supra) also held:

> ". . . In cases such as the instant one, which arises under 42 U.S.C., Section 1983, state courts exercise concurrent jurisdiction with federal courts."

Furthermore, 42 U.S.C., 1983 provides as follows:

> "Every person who under color of any statute, ordinance, regulation, custom or usage of any state or territory, subjects or causes to be subjected any citizen orthe United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit, inequity or other proper proceeding for redress."

It is beyond doubt that property rights are protected by the Fourteenth Amendment, and violation thereof can be redressed by suit under 42 U.S.C., Section 1983. Lynch v. Household Finance Corporation, 405 U.S. 358 92 S.Ct. 1113. . . (1972); Rios v. Cessna Finance Corporation, 488 Fed. 2d 25 (10th Cir. 1973 . . .)

> "Therefore, defense argument that 42 U.S.C. deals only with personal liberties is without merit." (Hofferber, supra).
>
> "The complaint herein does not allege that diversity of citizenship exist between plaintiff and all defendants, but the complaint does allege that plaintiff was deprived of her property and property rights under color of law. Diversity of citizenship is not a prerequisite to federal court jurisdiction. 42 U.S.C. Section 1983; Bottone v. Lindsley, 170 Fed. 2d 705 (10th Cir. 1948. .." (Hofferber, supra)
>
> ". . . In applying the above standard to the complaint in the instant case, the court concludes that plaintiff has asserted a

substantial federal question, namely defendant's alleged intentional violation of plaintiff's constitutionally protected property rights by alleged conspiracy with a state official. . ." (Hofferber, supra).

". . . The general rules where there is concurrent jurisdiction of state and federal courts is that the pending of an action in state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction." (Hofferber, supra).

Point V

Whether Judge Van Graafieland of the United States Court of Appeals did deny plaintiff-appellant due process and counsel

Judge Van Graafieland's conduct towards the plaintiff-appellant was oppressive, in that Judge Van Graafieland with full knowledge of the plaintiff's recovery from surgery, scheduled oral argument of the instant matter to be advanced from July 11, 1983, its originally scheduled time, to June 13, 1983, at a time Judge Van Graafieland knew the plaintiff-appellant could not appear, and denied all motions made by plaintiff-appellant to correct such a harsh abuse. Indeed, the conduct of Judge Van Graafieland was diabolical in its oppression, and resulted in the plaintiff-appellant's complaint to the Judicial Council, herein attached

(intra 40A) -- all this occurring because the plaintiff-appellant dared to complain of corruption in the state courts, and opposed and appealed from Judge Griesa's activities and decisions in the federal district court. (See Exhibit B, plaintiff-appellant's motion for en banc consideration).

Footnote:

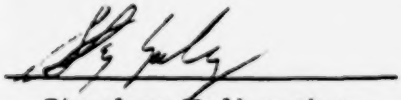
Chief Justice Wilfred Feinberg rejected the plaintiff-appellant's complaints of misconduct concerning Judge Van Graafieland (intra 54A) and Judge Griesa (intra 60A). The underlying background to Justice Feinberg's decision is provided (intra 32A-68A).

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals.

Dated: New York, New York
September 12, 1983

Respectfully submitted



Stanley Yalkowsky

Certificate of Service

I hereby certify that a copy of the foregoing brief and appendix was mailed by regular mail, postage prepaid, this 23rd day of May to the defendants listed below.

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UNITED STATES COURT OF APPEALS
For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, City of New York, on the 17th day of June, One Thousand Nine Hundred and Eighty-three.

PRESENT:

HON. ELLSWORTH A. VAN GRAAFIELAND,
HON. LAWRENCE W. PIERCE,
HON. JOHN MINOR WISDOM,*

Circuit Judges

----------x

STANLEY YALKOWSKY,

Plaintiff-Appellant,

ORDER
83-7131

v.

J. HENRY NEALE, JR., JOHN H. BARRY, RICHARD L. GERLOFF, FRANK M. HEADLEY, JR., PAUL W. KNAPLUND, JULES BACKMAN, JACKSON B. BROWNING, RAYMOND J. CANTWELL, DOROTHY V. GRIFFIN, JOHN W. JOHNSON, JR., IRVING J. KERN, GEORGE C. LAWRENCE, BETTY MENKE, S. J. SCHULMAN, ALFRED P. SLANER, THOMAS KAVANAUGH, LORRAINE T. CELIO, SCARSDALE NATIONAL BANK AND TRUST COMPANY,

* Senior Circuit Judge of the Fifth Circuit, sitting by designation.

HON. WILLIAM A. WALSH, JR., JONATHAN FRIEDMAN, AMERICO NAPOLITANO AND DEANNE NAPOLITANO, BENJAMIN SHEDLER AND ALLEN WEISS,

Defendants-Appellees.
----------X

Stanley Yalkowsky appeals from an opinion and order of the United States District Court for the Southern District of New York (Griesa, J.), entered on February 2, 1983, dismissing the complaint in the above-captioned action and in the companion action bearing Southern District Docket No. 82 C 5665.

On October 12, 1982 Judge Griesa dismissed the complaint in 82 C 5665 with leave to amend. Instead of filing an amended complaint, appellant brought the above-captioned action bearing Southern District Docket No. 82 C 8748. By his order dated February 2, 1983, Judge Griesa dismissed both complaints without leave to amend. We affirm

substantially for the reasons set forth by the district court in its several orders. The contention that Judge Griesa should have recused himself is completely without merit.

Double costs are awarded the briefing appellees in 83-7131.

Hon. Ellsworth A. Van Graafeiland

Hon. Lawrence W. Pierce

Hon. John Minor Wisdom

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

STANLEY YALKOWSKY, ANNA YALKOWSKY, PEREE YALKOWSKY and ANNA YALKOWSKY as Administratrix of the Goods, Chattels and Credits which were of MORRIS YALKOWSKY, Deceased; and Infants IRINA H. YALKOWSKY, RISAH SURAH YALKOWSKY and LARIN YALKOWSKY by STANLEY YALKOWSKY, their father and natural guardian,

82 Civ. 5665

Plaintiffs,

- against -

BENJAMIN SHEDLER, ALLEN H. WEISS, ALLEN J. KOZUPSKY, MARK ZAFRIN; SHEDLER, WEISS, KOZUPSKY & UNGER, a Law Partnership; SHEDLER, GROSSMAN, WEISS & KOZUPSKY, a Law Partnership; GROSSMAN, ZAFRIN, WEISS & KOZUPSKY, a Law Partnership; AMERICO NAPOLITANO, DEANNE NAPOLITANO (YALKOWSKY); HON. WILLIAM A. WALSH, GERALD STERN, ROBERT H. TEMBECKJIAN, FRANK CASTALDI, CARL A. VERGARI, JONATHAN FRIEDMAN, J. HENRY NEALE, JR., JOHN BRUNO, THOMAS C. KAVANAUGH, LORRAINE T. CELIO, RICHARD L. GERLOFF, JOHN BARRY, JOSEPH A. RICE, HON. MILTON MOLLEN, HON. GUY MANGANO, HON. VITO J. TITONE, HON. LEON LAZER, HON. DAVID T. GIBBONS,

HON. MOSES M. WEINSTEIN, HON. JOHN P. COHALAN, HON. FRANK A. GULOTTA, and IRVING SELKIN; SCARSDALE NATIONAL BANK AND TRUST COMPANY, IRVING BANK CORPORATION; MICHAEL GENTILE, JOSEPH ROSENBERG, KIM RINGLER, HON. RICHARD A. BROWN, HON. ISAAC RUBIN and HON. SEYMOUR BOYERS,

Defendants.

----------X

STANLEY YALKOWSKY,

Plaintiff,

- against -

82 Civ. 8748

J. HENRY NEALE, JR., JOHN H. BARRY, RICHARD L. GERLOFF, FRANK M. HEADLEY, JR., PAUL W. KNAPLUND, JULES BACKMAN, JACKSON B. BROWNING, RAYMOND J. CANTWELL, DOROTHY V. GRIFFIN, JOHN W. JOHNSON, JR. IRVING J. KERN, GEORGE C. LAWRENCE, BETTY MENKE, S. J. SCHULMAN, ALFRED P. SLANER, THOMAS C, KAVANAUGH, LORRAINE T. CELIO, SCARSDALE NATIONAL BANK AND TRUST COMPANY, HON. WILLIAM A. WALSH, JONATHAN FRIEDMAN, AMERICO NAPOLITANO and DEANNE NAPOLITANO, BENJAMIN SHEDLER and ALLEN WEISS,

Defendants.

----------X

OPINION

GRIESA, J.

This action was originally filed as 82 Civ. 5665 under the caption Yalkowsky v. Shedler, et al. Plaintiff appeared pro se. However, he is an attorney. At a conference on October 4, 1982, held on the record, I dismissed the complaint for failing to comply with the rules of pleading in the federal courts. That complaint contained 755 paragraphs and 18 exhibits. It was a discursive mass of narrative, and obviously included a great bulk of extra eous matters. The action was directed against a large number of defendants, who had been served and had been burdened with the need to appear in court. The suit, as filed, was simply an abuse. In dismissing the complaint, I granted plaintiff leave to file an amended complaint. However, I directed that the amended complaint should be

submitted to me for review before any service was made upon any defendant. An order embodying the October 4 ruling was signed October 12, 1982.

Plaintiff has sought to evade these directions. Instead of filing an amended complaint, he filed what purported to be a new action. It was given the docket number 82 civ. 8748 in the Clerk's office and was assigned to Judge Stewart. It was captioned Yalkowsky v. Neale, et al. The complaint in 82 civ. 8748 names many of the same defendants as in 82 civ. 5665.

The so-called second action, 82 civ. 8748, has now been transferred to me.

The new complaint has 245 paragraphs. Again, it is a rambling document full of material which has no proper place in a pleading. However, it is possible to discern the nature of the claims. It is evident, upon analysis, that the complaint fails to state any

valid claim cognizable in a federal court.

The ensuing discussion will relate to this second complaint, 82 civ. 8748. It purports to allege claims under three federal statutes -- 12 U.S.C. § 7.5225, 12 U.S.C. § 7.5225 and 42 U.S.C. § 1983. With regard to the second of these, there is no such statute. Presumably plaintiff intends to refer to a regulation 12 C.F.R § 7.5225. In addition to referring to these specific federal laws, the complaint refers vaguely to other unspecified federal statutes. Also, there are numerous claims which do not even purport to fall under federal law, and would be state law claims, if they were colorable claims of any kind.

The action arises out of a contested divorce proceeding in Supreme Court, Westchester County, which took place in 1981 between plaintiff and

defendant Deanne Napolitano, plaintiff's former wife. Defendant Walsh was the justice who presided. Defendants Shedler and Weiss are attorneys who represented Deanne Napolitano. Defendant Americo Napolitano testified on behalf of Deanne Napolitano, and subsequently married her. Defendant Scarsdale National Bank ("SNB") was subpoenaed by plaintiff in the divorce proceeding to provide certain information. Also, it is alleged that SNB held $3,000 in trust for plaintiff's daughter and improperly paid this money out. Defendant Neale represented SNB in connection with the divorce proceeding subpoena. Other defendants are directors of SNB.

Plaintiff alleges that there was a conspiracy by defendants to deprive him of a fair trial in the divorce proceeding by concealing his wife's assets, thereby resulting in requirements of higher

alimony and child support payments than would otherwise have been imposed. Among other things, plaintiff alleges that SNB had documents showing assets of his wife over and above what she admitted, and that SNB failed to produce these documents pursuant to subpoena.

Plaintiff alleges that there was a fund created by court order in the settlement of an unrelated personal injury action involving his daughter Peree. Plaintiff alleges that the fund was supposed to be deposited at Eastern Savings Bank and that withdrawals were to be made only under court order. It is alleged that his wife improperly deposited with SNB and later drew the money out without proper authorization. The complaint alludes to a state court proceeding against SNB to have the funds restored, but the complaint does not discuss the outcome of this proceeding.

The complaint states no valid claim under any federal law. With regard to the possible state law claims, there is no diversity of citizenship, therefore there is no jurisdiction over the state law claims.

One of the federal statutes referred to in the complaint is 12 U.S.C., 93. It is alleged that this statute is the basis for holding the SNB directors liable for the alleged wrongful payment of the $3,000 account. Section 93 provides that if the directors of any national bank shall knowingly violate, or knowingly permit a violation of "this chapter," the franchise of the bank shall be forfeited; and the Comptroller of Currency may sue to dissolve the bank. The statute also provides that, in cases of violation, every director who has participated in or assented to such violation, shall be liable for the

damages which the bank, its shareholders, or any other person has sustained.

This statute has no application to anything raised in the complaint in this action. "This chapter" refers to Chapter 2 of The National Bank Act. The provisions of Chapter 2 refer to the organization, capitalization, dissolution and other matters affecting the basic structure of a national bank. Chapter 2 does not cover claims on behalf of the beneficiary of a deposit, with regard to a particular account.

The complaint also appears to allege that the handling of the $3,000 account violated 12 C.F.R. § 7.5225. This regulation requires that an immediate written report be made to federal officials regarding thefts, embezzlements and other defalcations. This regulation provides no basis for any cause of action alleged in the present complaint.

The complaint also alleges the right to recover under 42 U.S.C. § 1983 for an alleged conspiracy among defendants to deprive plaintiff of due process in his divorce proceedings. Aside from other infirmaties, it is the law that defendant Walsh, as a justice of Supreme Court, Westchester County, is immune from suit under § 1983. Pierson v. Ray, 386 U.S. 787 (1966); Heimbach v. Village of Lyons, 597 F.2d 344 (2d Cir. 1979). The other defendants are private parties who cannot be sued under § 1983. The fact that some of them participated in a state court proceeding as a party or witnesses does not subject them to suit under the statute. Russel v. Town of Mamaroneck, 440 F. Supp. 607 (S.D.N.Y. 1977); Gras v. Stevens, 415 F. Supp. 1148, 1152 (S.D.N.Y 1976); Stambler v. Dillon, 302 F. Supp. 1250, 1255 (S.D.N.Y. 1969).

For the foregoing reasons, both of the captioned actions are dismissed. The complaint in Yalkowsky v. Shedler, et al. (82 civ. 5665) was dismissed pursuant to the order of October 12, 1982 and no amended complaint in that action was filed. The complaint in Yalkowsky v. Neale, et al. (82 civ. 8748) is dismissed for the reasons set forth in this opinion. The dismissal of these actions is final. There will be no leave to file any further amended complaint.

So ordered.

Dated: New York, New York
February 2, 1983

THOMAS P. GRIESA, U.S.D.J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YALKOWSKY,	)	
	)	82 Civil
vs.	)	5665 (TPG)
	)	
SHEDLER, et al,	)	

Before:

Hon. Thomas P. Griesa

District Judge

New York, N.Y.

October 4, 1982
10:00 A.M.

Appearances:

Stanley Yalkowsky, Esq., and
Peree Yalkowsky, Plaintiffs
Appearing Pro Se

Donald Goldberg, Esq.,
Attorney for Defendants Americo
and Deanne Napolitano

Winthrop, Stimson, Putnam &
Roberts, Esqs.,
Attorneys for Defendant Irving
Bank Corp.
By: Robert J. Sussman, Esq.
of counsel

Robert Abrams, Esq.
New York Attorney General
Attorney for Judges of the
Appellate Division, Stern, et al

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Appearances Continued:

By: Frederic Lieberman, Esq.
Assistant Attorney General

Kenneth Horwitz, Esq.
Attorney for Benjamin Shedler,
Weiss, Kozupsky, Zafrin, Unger
and Law Partnership

Semel, McLaughlin, Boockmann &
Skydel, Esqs.
Attorneys for Defendant
Castaldi, Vergari & Friedman
By: Louis J. Schepp, Esq.
of counsel

THE COURT: As I understand it, the object of this action is to remove certain matters from state courts to the federal court, right?

MR. YALKOWSKY: Yes, that's one aspect of it.

THE COURT: The prayer for relief after paragraph 755, that's what it says: "Wherefore, plaintiff begs this federal court, Southern District, to remove matters described and pending in the

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state courts to this federal court."

Is there any other prayer for relief in the complaint?

MR. YALKOWSKY: Just that there is an action for damages.

THE COURT: Where is the prayer for relief on that?

MR. YALKOWSKY: I believe --

THE COURT: Do you have a copy of the complaint?

MR. YALKOWSKY: Yes, I have.

THE COURT: Do you have a copy of the complaint?

MR. YALKOWSKY: Not with me right now, your Honor.

THE COURT: Is there any prayer for relief for damages?

MR. YALKOWSKY: Yes, sir, I believe there is, your Honor.

MR. HORWITZ: Yes, there is some prayer for relief, about $50 million

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in one section and $25 million in another.

THE COURT: I never read that.

MR. HORWITZ: I have, your Honor. But I would have to look through it. I don't know the page.

THE COURT: Do you have a copy?

MR. HORWITZ: You are looking at my copy right now.

THE COURT: Why don't you take it and find it.

MR. SUSSMAN: Your Honor, the prayer for relief for the complaint starts at paragraph 659. Two pages later there is a motion for removal from state court, and the prayer for relief which you refer to, your Honor, is at the end of paragraph --

THE COURT: I see. I got it. So there is one document that ends at paragraph 659 followed by a prayer for relief, and then there is a motion for

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removal from state court.

I would say on my own motion that the Court cannot entertain this complaint. It in no way complies with the rules of our court. No party should be required to answer this document. No court should be required to entertain any litigation based on such a document.

Are you an attorney?

MR. YALKOWSKY: Yes, I am.

THE COURT: It is out of the question. The document just speaks for itself.

MR. YALKOWSKY: May I respond, your Honor?

THE COURT: Yes.

MR. YALKOWSKY: Considering that your Honor just stated before he spoke that he didn't read the document, I would think that would be somewhat unfair of your Honor to state so.

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THE COURT: I'll be very frank with you. I don't intend to read it, and that's the thing: that a complaint should not be a long, long narrative with allegations of evidence, allegations of minute facts, essay, description, dialogue, etc., etc.

I read pleadings when the pleadings are before me in some proper manner. But this would take hours upon hours to read and figure out. It is not my burden to do that. No attorney, no defense attorney or defendant should be required to make his way through this. We should not have a litigation where on the basis of this kind of a thing a host of attorneys are crowded into this room, as they are today. Maybe the word "host" is a little exaggeration, but a lot of lawyers have come here because either they or their clients have been sued.

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And it will go no further.

The action is dismissed and I'll enter an order to that effect.

MR. YALKOWSKY: With thirty-five or so defendants, and considering the number of acts, it would be required to have a document of that size to explain all that has happened.

THE COURT: No.

MR. YALKOWSKY: And your Honor is just taking away my just right to appear in court?

THE COURT: If you read the Federal Rules, and if you want to -- frankly, I have no confidence that you will file an amended complaint that really is -- if you filed this, I have no confidence that you know how to file a proper complaint.

But certainly, I will permit you to try. This complaint is dismissed

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with leave to submit to the Court, before service on any party, a proposed amended complaint. But I direct you that you are not to serve any party with the amended complaint until I approve it. I am not going to have lawyers, banks, judges all over town served with process in this action, required to come in, required to set up files, required to respond to a document like this.

I will screen it first. No party is required to take any further steps whatever. The action is dismissed and terminated entirely with leave on your part to submit to the Court a proposed amended complaint. And until that time no party, no defendant has any obligation to take any steps whatever. The action is dismissed.

The only thing I would appreciate, I guess I am requiring one thing,

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is that one of the defendants submit to me for signature a very short order dismissing the complaint. If you have any difficulty, get the transcript of what I've said and just embody what I've said in an order.

MR. HORWITZ: Sure.

STANLEY YALKOWSKY
Attorney at Law
25 CENTRAL PARK WEST
NEW YORK, NEW YORK 10023

212-581-4294

January 3, 1983

Justice Thomas Griesa
United States Courthouse
Room 620
Foley Square
New York, N. Y. 10007

Dear Justice Griesa:

I am enclosing a new complaint that I will be serving on the named defendants. This action is different from the action that was presented to you that resulted in a dismissal with leave to amend on October 4, 1982. While many of the parties are the same, this action is primarily in fraud and deprivation of due process, while the dismissed action primarily was based on deprivation of a family and violation of a plaintiff's civil rights.

It is my contention, most respectfully, that Your Honor is legally wrong in requiring me to present to Your Honor a proposed amended complaint in the first instance before service upon the defendants in the dismissed action. Plaintiff presently is appealing all aspects of Your Honor's dismissal of that complaint, as well as Your Honor's requirement that

the plaintiff present you first with an amended complaint.

Nonetheless, although it is apparently unnecessary, lest it be said that the plaintiff was in any way disrespectful of Your Honor's desires, he provides you with this new and different complaint which he will be serving upon the defendants so that Your Honor can decide whether this complaint can be construed as being in violation of Your Honor's order dated October 1982.

The second inquiry, in fact request, that plaintiff makes of Your Honor is that Your Honor disqualify yourself from all further contact with matters concerning the plaintiffs arising out of the matter recently dismissed by Your Honor on October 4, 1982, in that Your Honor has shown bias.

Respectfully yours,

_____

Stanley Yalkowsky

cc: Defendant Attorneys

N.B: Please note that the use of the word "amended" in the plaintiff's new complaint concerns only a typographical correction of that complaint and has nothing to do with the matter dismissed October 4, 1982.

NEALE & WILSON & GARDELLA
Attorneys & Counsellors at Law
Harwood Building
SCARSDALE, N. Y. 10583

J. Henry Neale
Addison R. Wilson
J. Henry Neale, Jr.
Richard M. Gardella

Telephone
SCarsdale3-4060
Area Code 914

February 3, 1983

Hon. Thomas P. Griesa
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Yalkowsky v. Neale, et al.
82 Civ. 8748 (?)

Dear Judge Griesa:

Our firm represents Scarsdale National Bank and several individuals (Neale, Gerloff, Headley, Knaplund, Backman, Browning, Cantwell, Griffin, Johnson, Kern, Lawrence, Menke, Schulman, Slaner, Kavanaugh and Celio) who have been named as defendants in this most recent action instituted by Stanley Yalkowsky.

I understand that the most recent complaint by Mr. Yalkowsky has been referred to you, in accordance with the order filed October 21, 1982 dismissing a prior action by Mr. Yalkowsky

(Yalkowsky v. Shedler, et al. 82 Civ. 5665 (TPG)) dismissed by order filed October 21, 1982, with leave to renew upon a proper pleading, and that by your decision today, his complaint has been dismissed.

I would be grateful if you would send me a copy of your decision and order dismissing the complaint by Mr. Yalkowsky. A self-addressed envelope is enclosed. Please send me a copy of your decision and the order at your earliest convenience.

Very truly yours,

J. Henry Neale, Jr.

JHNJr./bm

cc: Stanley Yalkowsky, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STANLEY YALKOWSKY, Plaintiff, - against - J. HENRY NEALE, JR., ET AL. Defendants.	82 CIVIL JUDGMENT Filed Feb. 14 1983

Whereas the above entitled action having been assigned to the Honorable Thomas P. Griesa, United States District Judge, and the Court thereafter on February 2, 1983 having handed down its OPINION (#54245) dismissing the complaint, it is

ORDERED, ADJUDGED AND DECREED: That the complaint is hereby dismissed. There will be no leave to file amended complaint.

DATED: NEW YORK, N.Y.
February 14, 1983

Clerk

UNITED STATES COURT OF APPEALS
For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 17th day of June, One Thousand Nine Hundred and Eighty-three.

PRESENT:

HON. ELLSWORTH A. VAN GRAAFIELAND
HON. LAWRENCE W. PIERCE
HON. JOHN MINOR WISDOM*
Circuit Judges

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STANLEY YALKOWSKY, ANNA YALKOWSKY, PEREE YALKOWSKY, and ANNA YALKOWSKY as Administratrix of the Goods, Chattels and Credits which were of MORRIS YALKOWSKY, Deceased; and Infants IRINA H. YALKOWSKY, RISAH SURAH YALKOWSKY and LARIN YALKOWSKY by STANLEY YALKOWSKY, their Father and Natural Guardian,

ORDER
82-7845

Plaintiffs-Appellants,

v.

BENJAMIN SHEDLER, ALLEN H. WEISS, ALLEN J. KOZUPSKY, MARK ZAFRIN; SHEDLER, WEISS, KOZUPSKY & UNGER, a Law Partnership; SHEDLER, WEISS, KOZUPSKY, a Law Partnership; SHEDLER, GROSSMAN, WEISS & KOZUPSKY, a Law Partnership;

GROSSMAN, ZAFRIN, WEISS &
KOZUPSKY, a Law Partnership;
AMERICO NAPOLITANO, DEANNE
NAPOLITANO (YALKOWSKY);
HON. WILLIAM A. WALSH, JR.,
GERALD STERN, ROBERT H.
TEMBECKJIAN; FRANK CASTALDI,
CARL A. VERGARI, JONATHAN
FRIEDMAN, J. HENRY NEALE, JR.,
JOHN BRUNO, THOMAS C. KAVANAUGH,
LORRAINE T. CELIO, RICHARD L.
GERLOFF, JOHN BARRY, JOSEPH A.
RICE; HON. MILTON MOLLEN,
HON. GUY MANGANO, HON. VITO J.
TITONE, HON. LEON LAZER, HON.
DAVID T. GIBBONS, HON. MOSES
M. WEINSTEIN, HON. JOHN P.
COHALAN, HON. FRANK A.
GULOTTA and IRVING SELKIN;
SCARSDALE NATIONAL BANK &
TRUST COMPANY, IRVING BANK
CORPORATION; MICHAEL GENTILE,
JOSEPH ROSENBERG, KIM RINGLER,
HON. RICHARD A. BROWN, HON.
ISAAC RUBIN and HON. SEYMOUR
BOYERS,

Defendants-Appellees.
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Stanley Yalkowsky, et al. appeal from an order of the United States District Court for the Southern District of New York (Griesa, J.), dated October 12, 1982, dismissing their complaint for failure to comply with the pleading requirements of Fed. R. Civ. p. 8.

The order granted leave to amend the complaint provided that the amended complaint be submitted to the district court for its approval prior to its being served. The order was not final and therefore is not appealable. Kozemchak v. Ukranian Orthodox Church of America, 443 F.2d 401 (2d Cir. 1971)

The appeal is dismissed with double costs against appellant Stanley Yalkowsky allowed the briefing appellees.

Hon. Ellsworth A. Van Graafieland

Hon. Lawrence W. Pierce

Hon. John Minor Wisdom

Filed: June 17, 1983
A. Daniel Fusaro, Clerk
United States Court of
Appeals, Second Circuit.

. . . constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cired or otherwise used in unrelated cases before this or any other court.

Judicial Council
Court of Appeals Clerk
40 Foley Square
New York, New York 10007

Petition for Review to the
Judicial Council

The petitioner, Stanley Yalkowsky, after having made complaint to the Chief Judge of the Court of Appeals, Wilfred Feinberg, brings this matter now to the Circuit Council.

It should be very comforting to those corrupt and perverse judges performing in the federal courts, Southern District, and elsewhere to know that they will be well protected by Judge Wilfred Feinberg, and complaints of their misconduct, no matter how well substantiated will be characterized as frivolous, unfounded or baseless, as judges "tricks of the trade," like reference to 28 U.S.C 372(c)(a)(iii) twelve times to justify anything, was resorted to by Judge Wilfred Feinberg in his decision supporting his finding that Judge Griesa and Judge Van Graafieland did nothing wrong at all."

After all, what could be wrong with a judge calling a conference after conning the plaintiff into waiving his legal rights and then dismissing a

Footnote: Had Judge Van Graafieland raped my daughter or burglarized my home, that very same section could have been referred to by Judge Feinberg.

complaint after agreeing not to? And what could be wrong with not reading a complaint, and not wanting to know anything about the complaint, and dismissing it? And then when the plaintiff appeals, what could be wrong, as Judge Feinberg reasons, with a circuit judge, who sits as a cohort and peer of Judge Feinberg, to schedule whatever hope the plaintiff has to finally explain his complaint for a time when the plaintiff is recovering from surgery? And why not advance another matter originally scheduled for a month later at the same time, to make sure the plaintiff cannot explain anything and cannot appear? Nothing wrong, reasons Feinberg.

I am going to give you, Judge Feinberg, fair warning -- I gave similar fair warning to Judge Milton Mollen and to some other wonderful judges performing in our state and federal courts -- and that fair warning to you, Judge Feinberg, is that I do not proceed empty-handed.

Personally, I think Judge Feinberg is frightened, frightened at years of building an appearance of propriety and respectability for his court, and seeing it being exposed for what it is -- something far worse than what Judge Brocton Lockwood discovered in Cook County, Illinois, where it was estimated that one in eight judges is crooked; and where that matter is now to be presented to a federal grand jury; and where Harry Conerford, the Chief Judge of the Cook County Circuit took quite a different position than our Judge Feinberg when he stated, "As far as I am concerned, the court system should be able to withstand any type of investigation."

I do not think that kind of courage resides in Judge Feinberg, whose decision had an exterior of feigned arrogance, but went just a little too far when it tried to justify the unjustifiable, and showed just how far judges, even the Chief Judge of the Court of Appeals, is willing to go to cover up crime and corruption in the courts, and perhaps even worse, when he feels safe that he is dealing with a weaker entity.

So Judge Feinberg can reason that the complainant's daughter appeared anyway for him, when she was told she cannot appear, until the very last moment, and she is rushed to say in five minutes what would take hours, and the person whose right it is to appear in court is denied. And her efforts to read into the record her father's sought disqualification of Judge Van Graafieland, Judge Feinberg can conclude:

> "Complainant's motion to disqualify the judge . . . were received after oral argument."

Which he then followed with a non-sequitar:

> "It appears from the record, however, that although complainant did write the judge a letter asking for his disqualification, he never filed formal motion to that effect."

Not only are these statements by Judge Feinberg illogical, but they are patently untrue. The motion to disqualify

Judge Van Graafieland was received by the Clerk of the Court well before oral argument. Or, Judge Feinberg can reason: That the portion of the complaint charging Judge Griesa with (1) offering procedural advice under false pretenses through his law clerk is. . . "without factual support in the record . . ."

Just what record is Judge Feinberg talking about? The part he wishes to suppress? Feinberg continues:

> ". . . There is no indication in the record that the advice was given under false pretenses. . ."

(Kerry Konrad, Judge Griesa's law clerk, called me and coaxed me not to make any default motions against the defendants who were late in responding, and assured me that Judge Griesa would not dispose of the matter at the conference. I provided in my complaint to the Judicial Council a portion of this taped conversation between myself and Kerry Konrad.)

But when Judge Feinberg wants to protect his Judge Griesa from charges of extra-judicial contact between himself and one of the attorneys, he finds, "an investigation reveals that the district judge merely had borrowed the attorney's copy of the complaint." I wonder what "record" Judge Feinberg used to get that information. Or, Judge Feinberg states that the complainant's charges that the "judge was required to read the entire voluminous complaint . . . is frivolous." That is just dishonest. The charges never required anything of the sort. Judge Griesa did not read a sentence and

had a conference, and did not want to hear a word about the case. He did not want to know or see anything. And Judge Feinberg is endorsing this. Why?

Because one thing leads to another, and because Irving Selkin, the Clerk of the Appellate Division, Second Department a shake-down artist of the lowest common denominator (of whom numerous examples of his despicable conduct was presented to this court, with a lot more to come) was a problem just too tough to handle, and called for suspension of justice rather than the consequential results of what investigation of Selkin would produce.

WHEREFORE, the complainant requests that his charges of judicial misconduct concerning Judge Griesa and Judge Van Graafieland be sustained.

Dated: New York, New York
August 22, 1983

Stanley Yalkowsky

STANLEY YALKOWSKY
Attorney at Law
25 Central Park West
NEW YORK, NEW YORK 10023

212-581-4294

August 30, 1983

Dear

On August 25, 1983 two FBI agents came to my home because of a complaint made by Justice Wilfred Feinberg, our Chief Justice of the Court of Appeals.

The substance of Justice Feinberg's complaint was his concern over one paragraph contained in my petition for Judicial Council review, which stated the following:

> "I am giving you, Judge Feinberg, fair warning -- I gave similar fair warning to Judge Milton Mollen and to some other wonderful judges performing in our state and federal courts -- and that fair warning to you, Judge Feinberg, is that I do not proceed empty-handed."

This paragraph alone, taken out of context, and without the three-page petition, which I now include, was all that Judge Feinberg provided to the FBI. Judge Feinberg claimed that the balance was confidential, or personal, or privileged, or what have you.

When the FBI called my home, I explained that obviously "empty-handed" referred to the evidence I possess, tapes and documents, etc., that I had previously warned Mollen and other judges about. But Chief Justice Feinberg was not satisfied and insisted the FBI come personally to my home.

When I first heard that the FBI had called, I thought, at last! My charges were going to be aired -- charges of corruption, forgery and bribery of banks, district attorneys turning over confidential information to the defendants, a corrupt clerk of the Appellate Division, Second Department, extra-judicial activities of judges, false affidavits of attorneys. Not a chance.

For years I could not get any action, not even a response. But one call from Judge Feinberg and two top-notch FBI men are at my door within an hour. And we sit and discuss what is meant by "empty-handed."

For heavens sakes, look what has happened. And look what can happen if our Chief Justice of the Court of Appeals, one of the highest judges in the United States, can do a thing like this.

I really do not know what to expect. I know a man named Guillermo Patricio Kelly was kidnapped down in Argentina because he brought several disturbing legal actions.

Nonetheless, on September 19, 1983 I will be presenting oral argument to the United States Court of Appeals

concerning one of my lesser complaints, the fraud and criminality of a national bank, and the submission of false affidavits by an attorney representing the United States Attorney General's Office.

In conclusion, Judge Wilfred Feinberg, simply because he did not like what I had to say, misused the great powers vested in him by trying to convert the FBI into the KGB.

Sincerely,

_____

Stanley Yalkowsky

STANLEY YALKOWSKY
Attorney at Law
25 Central Park West
NEW YORK, NEW YORK 10023

212-581-4294

July 7, 1983

Justice Wilfred Feinberg
Judicial Council of the
United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

Re: Matter of the charge of judicial misconduct by Justice Ellsworth Van Graafieland

Sir:

The complainant, Stanley Yalkowsky, duly sworn deposes and says:

1. That Justice Ellsworth Van Graafieland of the United States Court of Appeals has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

2. The charges presented by the complainant concerning Justice Ellsworth Van Graafieland can only be broadly described as oppression, and if oppression is an act of official misconduct by a judge, the following incidents and actions of Justice Van Graafieland would warrant a finding of misconduct.

3. If maneuvering cases to have them heard before their scheduled time, and at a time while the complainant was recovering from surgery is considered a vile act by a judge, this Judicial Council would have to find that Justice Van Graafieland committed a vile act. (27-34) (42)(60)(62-64).

4. And if denying the complainant's motion to permit a postponement so that the complainant may be heard, that could easily be considered oppression. (27-34), (60), (62-64), (68).

5. If this Judicial Council were to review the complexity of the issues and the importance of the issues, as well as their unpopular nature; and were to hear that five minutes were granted for argument time when sixty was requested by the complainant, this Judicial Council will see oppression (68).

6. If putting three different cases, all scheduled to be heard on separate dates, on for the same date, when one of the issues is the separate nature of these suits, this too can easily be interpreted as oppression. (35-50), (59), (67).

7. If having a clerk notify the complainant's daughter that she cannot speak in his behalf, when she was one of the pro se litigants, that too is oppression. (Justice Van Graafieland

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Footnote: Page numbers referred to are marked in red.

had Ms. Defrietas, a clerk of the Court of Appeals, notify the complainant that his daughter cannot appear in his stead.)

8. If when the complainant's daughter appears and is told that all three actions would be heard together, and that she is allotted only five minutes for all three actions, that too is oppression. (June 13, 1983 oral argument).

9. And when Justice Van Graafieland tells the defense that they do not have to respond, something is wrong, and that is more than oppression, that is a pre-determination by a justice before whom a matter has been heard, and actions by a justice that are not in keeping with a Court of Appeals of the Federal Courts. (June 13, 1983 oral argument).

10. And when a Justice Van Graafieland grants defense motions based on fraud, when he denies all reasonable motions brought by honest pleadings of the complainant, something is terribly wrong. (43-50), (61), (65).

11. And after the granting of a defendant's motion to file a late pleading it is mysteriously required that a motion be made by the complainant to answer the late pleading, this is strange. (34).

12. And when the complainant tells the clerk he has no intention to make a motion to answer a late pleading, when he has timely replied; and then for Justice Van Graafieland to grant complainant permission to file a late

pleading, when he never made such a motion, again indicates something is wrong. (51)

If a Justice Griesa can run around and contact a Justice Stewart to usurp pleadings, when he knows that the complainant seeks an inquiry as to his conduct, can we not assume that Justice Griesa would contact Justice Van Graafieland? Is not there enough here to mandate inquiries into this inter-judicial conduct?

13. And then we have the complainant providing, on June 10, 1983, the Court of Appeals with a motion seeking to disqualify Justice Van Graafieland (69, 70), acknowledged and received by the Court of Appeals on June 13, 1983, yet we have Justice Van Graafieland stamping the motion for his disqualification as filed on June 22, 1983, after his decision of June 17, 1983, and writing in that the motion is denied "as moot papers received after argument" (66), and making this notation on one of the secondary documents and not on (69), this is not only oppression, it is unwholesome.

The attached Notice of Petition for rehearing and in banc suggestion contains numerous details and facts which show the misconduct of Justice Van Graafieland, and in looking at the complainant's Affirmation (pages 19, 20), which describe the conduct of the Appellate Division, Second Department after the complainant charged corruption,

we see a very similar pattern followed by Griesa and now Van Graafieland.

The most amazing aspect of all this is that after the complainant described an Irving Selkin, the Clerk of the Appellate Division, Second Department, as nothing less than a corrupt and despicable individual, with evidence and proof possessed by the complainant (49), not one agency nor one judge has sought to verify the truth or falsity of the complainant's allegation, but on the contrary almost every judge and every agency has sought to suppress, deride and oppress the complainant from the exposure that can come from such a revelation.

Summary

The activities of Justice Van Graafieland were strange in addition to being oppressive and viscious. In the beginning Justice Van Graafieland kept his name out of the decisions that were made and the complainant thought it was the Clerk of the Court of Appeals who was making very unusual decisions. For instance, an undated letter was sent to the complainant to tell him that he had five minutes argument time on each of his cases. This unsigned decision, and unidentified decision, was made on or about June 1, 1983 (68). Another unusual decision occurred on or about April 29, 1983, when Theodore Steingut, the defense attorney for Scarsdale et al, sought enlargement of his time to answer the plaintiff's complaint, a motion

that was unopposed and granted to Mr. Steingut. But what was strange was the statement on this granted motion that, "This appeal shall be heard together with the appeals in #82-7845 and #83-7169" (59). How or who or why such a decision would be provided when a motion was not made concerning such a decision, and unsigned by a judge, was indeed strange behavior, and the complainant could get no explanation from the Clerk who signed such motion, and who added this mysterious decision. He would not even provide the name of the judge. And it was not until on or about June 1, 1983 that the complainant first learned of just who Justice Van Graafieland is and just what he had been doing all this time, and for the first time Justice Van Graafieland signed a decision. This was learned by the complainant on or about June 1, 1983, that one of the cases scheduled to be heard on July 11, 1983 was now to be heard on June 13, 1983, a time which was impossible for the complainant to appear. (42)

The complainant asks that his presence be permitted and/or that a point by point refutation be responded to concerning his charges, and if this Judicial Council cannot, by reason of its close relationship with Justice Van Graafieland, fairly hear and determine this matter, that it then be referred to another Judicial Council pursuant to federal law.

Everything about this matter smells and smells bad, and if any of the justices of this Judicial Council would review the legal arguments presented by the complainant and his facts, and the maneuvers and strange activities of Justices Griesa and Van Graafieland, we have the unmistakable note of corruption.

Very truly yours,

_____

Stanley Yalkowsky
25 Central Park West
New York, N. Y. 10023

State of New York)
County of New York) ss.:

Sworn to before me this
8th day of July 1983.

STANLEY YALKOWSKY
Attorney at Law
25 Central Park West
NEW YORK, NEW YORK 10023

212-581-4294

July 7, 1983

Justice Wilfred Feinberg
Judicial Council of the
United States Court of Appeals
for the Second Circuit
Foley Square
New York, New York 10007

Re: Matter of the charge of judicial misconduct by Justice Thomas Griesa

Sir:

The complainant, Stanley Yalkowsky, duly sworn, deposes and says:

1. That Justice Thomas Griesa of the Federal Court, Southern District of New York has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.

2. That Justice Thomas Griesa did have his law clerk, Kerry Konrad, call Stanley Yalkowsky and under false pretenses coax the complainant into not making a default motion against his adversaries, who did not timely answer, by stating:

> ". . . But I think we can have a conference which will be fruitful for us, for you and at least for those that we could get, and we couldn't dispose of the action at that time." (Partial transcript of conversation with Kerry Konrad)

3. That Justice Thomas Griesa dismissed the complaint after admittedly not reading the complaint; and that Justice Thomas Griesa did state that he had no intention of reading such complaint. And that was the conference.

4. That Justice Thomas Griesa, on information and belief, did have extra-judicial contact with Kenneth Horwitz, an attorney for the defendants in this matter, in that he had Mr. Horwitz' complaint in his possession, when the plaintiff provided the complaint. (Exhibit A).

5. That Justice Thomas Griesa displayed bias by: (i) stating that he did not believe that the complainant could prepare a proper complaint, (ii) considered the complainant's complaint a burden (Exhibit A).

6. Justice Thomas Griesa ordered that an amended complaint be provided to him first before service upon any of the named defendants. (Justice Thomas Griesa's actions are provided in the attached Exhibit which contains the

transcript of the proceeding described as a "conference" held before Justice Thomas Griesa.

Subsequent to the Dismissal of the plaintiff's complaint on October 4, 1982

The complainant prepared an entirely new complaint which was totally different from the complaint before Justice Thomas Griesa. The new complaint had the word 'amended' on its face for the very simple reason that a party was missing and in order to add that missing party-defendant the Clerk informed the complainant that it would be necessary to term the complaint 'amended' so as to not make it necessary to prepare a new complaint.

7. The complainant sent a letter to Justice Griesa, dated January 3, 1983 (Exhibit B), and in such letter, as the Exhibit provides, the complainant explained why he used the word 'amended' so as to make it perfectly clear to Justice Griesa that this new complaint was not an amendment of the prior complaint before Justice Griesa. In this letter the complainant also expressed his desire to seek Justice Griesa's disqualification from any other proceeding in which Justice Griesa may be the justice before whom matters concerning the complainant may be heard.

8. Justice Griesa's action thereafter where he, without replying to the complainant's letter seeking his disqualification, secretly and in the misuse of Rule 15, usurped this new complaint (Yalkowsky v. Neale, et al.) from Justice Stewart, provide yet further evidence of official misconduct by a federal court judge. Justice Griesa's actions in claiming to read this new complaint (a) when he would not read a complaint legitimately before him, (b) outflanking a motion for his disqualification by knowing the complainant's intention to have him disqualified, by using Rule 15 to quickly dismiss the complainant's action before such motion for his disqualification could be made, (c) thereby dismissing a case that was not his, (d) and tainting another judge's deliberations on yet another matter concerning the complainant (the matter of Yalkowsky v. Mollen et al.).

9. In addition, Justice Griesa (concerning this second matter of Yalkowsky v. Neale, et al.) had, on information and belief, extra-judicial contact with J. Henry Neale, Jr., a defendant, in that J. Henry Neale, Jr. provided the complainant with Justice Griesa's decision even before such decision was entered by Justice Griesa. (See Exhibit C).

10. In addition, it should be noted that Justice Griesa's conduct and actions in this matter, where in dismissing both complaints he dismissed everything as "final" and characterized the complainant's actions as a "burden," after never replying to the complainant's letter, yet knowing the complainant's desire to have him disqualified, were extremely vindictive. (Exhibit D).

It must be stated with great emphasis that the matters presented before Justice Griesa were extremely important and had as an underlying background strong evidence of corruption and misconduct in the state courts; and that aside from this important element, the legal principles raised were absolutely correct and not capable of being dismissed.

11. The complainant's seeking of removal of his state actions into the Federal Courts were necessary and reasonable requests, since the complainant provided allegations, supported by evidence, of corruption in the Appellate Division, Second Department, and at the very least made claims and allegations that should arouse any judge's concern.

12. It should be noted again that Justice Griesa usurped and interfered with matters that had as one of its requests an inquiry into Justice Griesa's conduct.

The complainant recognizes the difficulty, if not futility, in his bringing complaint against a Justice Thomas Griesa of the Federal Court, and the futility in asking his peers to judge his conduct. It is not easy. And the complainant is very experienced, having run into this same "tradition" in the State Courts, where a State Judicial Commission also had an influential justice connected in one way or another with that Commission -- Justice Milton Mollen; and the futility of bringing a complaint against any influential judge if the matter has not been granted public notoriety.

The complainant in the State Courts provided evidence of the most horrendous activity of a Justice William Walsh of Westchester County, a judge who illegally prevented visitation without hearing or modification, and a judge who destroyed a family with the help of others, which the State Judicial Conduct Commission ruled were matters of appellate review, since to find otherwise would have brought severe difficulties for Milton Mollen and Irving Selkin, who are so closely related to the Judicial Conduct Commission of the State of New York.

The complainant asks that his presence be permitted and/or that a point by point refutation be responded to concerning his charges. (It is the complainant's sincere belief that the extra-judicial contact of Justice Griesa

extend far beyond merely the attorneys and defendants in this matter.)

The complainant wishes to provide to this Judicial Council a portion of the Statement of Facts in the matter of Stanley Yalkowsky v. J. Henry Neale, Jr. et al., Docket No. 83-7131, the matter in which Justice Stewart was assigned, which was usurped by Justice Griesa, and I invite this Judicial Council's review of pages 3 to 13 of the plaintiff's brief, and pages 16 and 17 of the plaintiff's reply brief. (Exhibit E).

Very truly yours

Stanley Yalkowsky
25 Central Park West
New York, N.Y. 10023
(212)581-4294

State of New York)
County of New York) ss.:

Sworn to before me this
8th day of July, 1983

UNITED STATES COURT OF APPEALS

for the Second Circuit

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In re

CHARGE OF JUDICIAL MISCONDUCT

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Filed
Aug. 10, 1983
A. Daniel Fusaro
Clerk
No. 83-8504

WILFRED FEINBERG, Chief Judge:

On July 13, 1983 complainant filed a complaint with the Clerk pursuant to 28 U.S.C. § 372(c)(1) and Local Rule § 0.24(a), charging a circuit court judge of this circuit with the commission of numerous acts of "oppression" against complainant in connection with the handling of complainant's three pro se appeals. Complainant, an attorney, also filed a complaint against the district court judge who handled the lawsuits at the district court level. An order dismissing that complaint has been entered today in No. 83-8505.

Complainant alleges that in the course of processing the appeals, the circuit judge in question acted in an oppressive, vile, strange and viscious manner, and he lists several examples to support his charge. Most of these examples are directly related to the merits of the judge's decisions or procedural rulings, e.g., that the judge had improperly scheduled the hearing of the appeals and had denied complainant's motion to adjourn the oral argument date; that the judge had permitted complainant inadequate oral argument time; that the judge had directed that complainant's daughter could not present oral argument in complainant's stead (although the judge ultimately permitted the daughter to do so); that the judge had improperly granted appellee's motion for an enlargement of time to file a

brief; and that the judge had improperly denied a number of complainant's motions. Accordingly I hereby order that this portion of the complaint be dismissed pursuant to 28 U.S.C. § 372(c)(3)(A)(ii).

Complainant also charges that the judge predetermined the appeals, in that he advised appellees that they need not respond after complainant's daughter had presented oral argument on behalf of complainant. The judge had already heard complainant's argument and obviously was not pursuaded by it, as the subsequent orders of the Court of Appeals indicated. There is no obligation for a judge to hear unnecessary argument. Nor does his failure to do so, on this record, support an inference that he improperly judged the appeal. Complainant's charge of predetermination id completely unfounded.

Accordingly, it is dismissed as frivolous under 28 U.S.C. § 372(c)(3)(A)(iii).

Furthermore, complainant alleges that the judge improperly denied complainant's motion to disqualify the judge as moot because the papers were received after oral argument, when complainant claims that the motion was provided to the court in advance of that date. It appears from the record, however, that although complainant did write the judge a letter asking for his disqualification, he never filed a formal motion to that effect. Moreover, the record reveals that the only motion denied as moot by the judge was a motion to adjourn oral argument and grant additional argument time; no disqualification motion was denied in that fashion. Accordingly, since this

allegation appears from the record to be baseless, I hereby order that it be dismissed as frivolous pursuant to 28 U.S.C. § 372(c)(3)(A)(iii). Moreover, to the extent that complainant is attacking the judge's implicit denial of complainant's request by letter for the judge's disqualification, this allegation is directly related to the merits of a decision and, as such, is also dismissed under 28 U.S.C. § 372(c)(3)(A)(ii).

Finally, complainant suggests that there was some kind of improper contact between the judge and the district court judge whose orders were on appeal. This charge is completely unsupported and amounts to a mere speculation by complainant. Accordingly, it is dismissed as frivolous under 28 U.S.C. § 372(c)(3)(A)(iii).

It is further ordered that Clerk is directed to transmit copies of this order to the complainant and to the judge whose conduct is the subject of the complaint.

WILFRED FEINBERG
Chief Judge

Dated: August 10, 1983

UNITED STATES COURT OF APPEALS

for the Second Circuit

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In Re

CHARGE OF JUDICIAL MISCONDUCT

----------x

Filed
Aug 10, 1983
A. Daniel Fusaro,
Clerk

No. 83-8505

WILFRED FEINBERG, Chief Judge:

On July 13, 1983 complainant filed a complaint with the Clerk pursuant to 28 U.S.C. § 372(c)(1) and Local Rule § 0.24(a), charging misconduct on the part of a district judge of this circuit in connection with the judge's handling of two of complainant's pro se lawsuits. Both of complainant's actions sought relief under 42 U.S.C. § 1983, among other grounds, and arose out of complainant's divorce proceedings in state court.

The district court judge dismissed complainant's lengthy complaint in the

first action for failure to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and granted leave to amend the complaint, provided that any amended complaint be submitted to the judge for approval before it was served. Complainant's appeal of the district judge's order was ultimately dismissed by the Court of Appeals. Complainant subsequently filed and served what he claimed to be a new action, which was assigned to another district judge. However, complainant sent a copy of this second complaint to the district judge being complained against, stating in his letter that he was providing the judge with a copy of the complaint so as not to appear "disrespectful." That judge, upon determining that the second action was related to the first one, arranged for its transfer to him. The judge then

dismissed the second action for failure to state a claim cognizable in federal court and dismissed the first action without further leave to amend. The judge's dismissal order was affirmed on appeal. Petitions for rehearing of both of complainant's appeals were denied by the Court of Appeals.*

Complainant's First Action

With respect to his first lawsuit, complainant charges the district judge with a number of acts of misconduct, including: 1) offering procedural advice under false pretenses through his law clerk; 2) failing to read the com plaint before dismissing it pursuant to Rule 8 of the Federal Rules of Civil

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*Complainant, who is an attorney, also filed a complaint against one of the circuit court judges who handled the appeals of complainant's actions. An order dismissing that complaint has been entered today in No. 83-8504.

Procedure: 3) having extra-judicial contact with an attorney for the defendants, in that the judge had that attorney's copy of the complaint in his possession during a pre-motion conference; 4) being biased by stating he did not believe complainant could file a proper complaint and that he considered reading the complaint to be a burden; and 5) ordering that before complainant could serve an amended complaint, he must provide it to the judge for approval.

The first and third charges are without any factual support in the record and , thus, are dismissed as frivolous under 28 U.S.C. § 372(c)(3)(A)(iii). Complainant was advised by the judge's law clerk in accordance with the judge's standard practice, and there is no indication in the record that the advice was given under false pretenses,

as complainant asserts. Similarly, there is no indication that there was any extra-judicial contact between the district judge and an attorney for one of the complainant's adversaries, as investigation reveals that the district judge merely had borrowed the attorney's copy of the complaint.

The second and fifth charges are directly related to the merits of the district judge's decision to dismiss the complaint for failure to comply with Rule 8 of the Federal Rules of Civil Procedure and to permit an amended complaint, provided that any amended complaint be submitted to the district judge for approval before it is served. Accordingly, these charges are dismissed pursuant to 28 U.S.C. § 372(c)(3)(A)(iii) Moreover, to the extent that complainant is claiming, in the second charge, that the district judge was required to read

the entire voluminous complaint before he could dismiss it under Rule 8, that charge also is frivolous and is dismissed under 28 U.S.C. § 372(c)(3)(A)(iii).

Finally, complainant's fourth charge of bias on the part of the district judge is one that may be redressed through ordinary legal remedies. With alternative legal remedies available to him, complainant's resort to the complaint procedures of the Judicial Councils Reform and Judicial Conduct and Disability Act and Local Rule § 0.24 to obtain relief is inappropriate. Cf. In re Charge of Judicial Misconduct, 593 F.2d 879 (9th Cir. 1979). Furthermore, this charge does not contain any colorable allegation of truly outrageous action by the judge or of a consistent and broader pattern of bias that amounts to

prejudicial interference with the effective and expeditious administration of justice. See In re Charge of Judicial Misconduct, supra, 593 F.2d at 881. Accordingly, it is dismissed under 28 U.S.C. § 372(c)(3)(A)(i) as beyond the scope of the Act.

Complainant's Second Action

With respect to the handling of his second lawsuit, complainant charges the district judge with: 1) improperly arranging for the transfer of the second lawsuit to him from another district judge as an action related to the first lawsuit; 2) in the course of arranging for such transfer, "tainting" the deliberations of the other district judge in another of complainant's actions; and 3) having extra-judicial contact with one of the defendants, as demonstrated by that defendant's

learning that the judge had dismissed the action before the decision allegedly was entered.

The first charge regarding the transfer of the second lawsuit is directly related to the merits of a procedural ruling and, thus, is dismissed under 28 U.S.C. § 372(c)(3)(A)(ii). Moreover, there is nothing in the record to support complainant's contention that the judge had effected the transfer so as to be able to dismiss the action before complainant could move for his disqualification. Indeed, as the record shows, complainant had asked the judge to recuse himself before the second action was dismissed andbby continuins to handle these matters, the judge had implicitly denied said request.

Complainant's second and third charges are pure speculation, without

any factual support in the record. Moreover. the docket sheet indicates that the decision in question had been filed on the day before the defendant allegedly learned of its existence. Accordingly, I order that these charges be dismissed under 28 U.S.C. § 372(c)(3)(A)(iii) as frivolous.

It is further ordered that the Clerk is directed to transmit copies of this order to the complainant and to the judge whose conduct is the subject of the complaint.

WILFRED FEINBERG
Chief Judge

Dated: August 10, 1983